

**BOARD OF APPEALS CASE NO. 5133**

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**BEFORE THE**

**APPLICANT: Arvin D. Sadler**

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**ZONING HEARING EXAMINER**

**REQUEST: Variance to create a building lot  
without the required 25 feet of road frontage;  
4035-B Norrisville Road, Jarrettsville**

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**OF HARFORD COUNTY**

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**Hearing Advertised**

**Aegis: 4/4/01 & 4/11/01**

**HEARING DATE: May 21, 2001**

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**Record: 4/6/01 & 4/13/01**

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## **ZONING HEARING EXAMINER'S DECISION**

The Applicant, Arvin D. Sadler, is requesting a variance, pursuant to Section 267-22C, of the Harford County Code, to allow the creation of a building lot with frontage on a 15 foot right-of-way in an AG/Agricultural District.

The subject property is located at 4035 Norrisville Road, east of Madonna, and is more particularly identified on Tax Map 23, Grid 4-D, Parcel 282. The subject parcel consists of 7.178± acres, is presently zoned AG/Agricultural and is located entirely within the Fourth Election District.

Mr. Arvin Sadler, the Applicant, appeared and testified before the Hearing Examiner. Mr. Sadler indicated that this parcel is shown as Parcel B on Attachment 3, which was included with the Staff Report prepared in this case and on a plat recorded with a deed indicated as "CGH No. 3157, Folio 510". It is one of two parcels purchased from Paul A. and William J. Meredith by the Applicant in 1976 and conveyed to him in two separate deeds. In referring to Attachment 3, Mr. Sadler identified a common drive which divides a much larger parcel, which we will identify herein as the north/south common drive. Mr. Sadler also owns a 50 foot strip of land along the north/south common drive and another parcel identified on the southeastern side, just south of Parcel A, which is a .507 acre lot. To the north of that .507 acre lot, is a 15 foot easement recorded for ingress and egress which adjoins Parcel B. Parcel A has been sold to the Applicant's son, Mr. Carl Sadler, and Parcel B was sold to Mr. and Mrs. Paul Bower in October, 2000. When the new buyer applied for a well permit, the Health Department stated that the parcel required a plat and when inquiry was made to the Harford County Department of Planning and Zoning, the Applicant and the Applicant's buyer were advised that the parcel had to be approved by the Board of Appeals because of lack of the requisite road frontage required by the Code.

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In essence, Parcel B is landlocked with the exception of the east/west easement, south of Parcel A, and the northwest easement driveway east of Parcel A and Parcel B. Mr. Sadler went on to state that the north/south driveway has existed since 1947 and that he has used that driveway throughout that period.

Upon cross-examination, the Applicant was referred to a document which has been identified as “Protestants Exhibit No. 1”, and is an agreement dated May 6, 1975 by and between Howard Neuhauser and Hattie Neuhauser and purports to be a deed conveying an easement for use of the north/south driveway to Mr. Arvin Sadler for use by Mr. Sadler for access to Jarrettsville Road from the three parcels that he owned at the time of this conveyance. The deed of easement goes on to describe those three parcels as “those tracts of land that had been conveyed by and described in a deed dated November 5, 1973, and recorded among the land records of Harford County in Liber H.D.C. No. 940, Folio 1073. The Applicant admitted that Parcel B was not one of the three lots described in the deed dated May 6, 1975.

The Applicant went on to describe the overall parcel as consisting of 7.178 acres, well wooded, not suitable for agricultural use, and intended for use as a residence. He thought the property was unique and, due to the uniqueness, should provide sufficient grounds to grant a variance. The 7 acre lot, according to the Applicant, has one development right. On further cross-examination, the Applicant indicated that there was no maintenance agreement in existence for the north/south drive and that this drive had actually served a much larger farm at one time, which is now occupied by extended members of the Sadler Family.

Upon questioning by the Hearing Examiner regarding the half-acre lot located to the south of Parcel A, the Applicant stated that he believed he could create an access drive from Parcel B across that parcel to MD Route 23 in order to satisfy the access requirements of the Harford County Code.

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Mr. Anthony McClune of the Department of Planning and Zoning, appeared and testified next. Mr. McClune indicated that the 15 foot north/south driveway easement is not recognized other than an easement and is not recognized by the County as a private road. Mr. McClune did admit that the subject property was unique in that it was subdivided without County approval in 1976 and contains one development right. The parcel meets the 2 acre minimum required by the Code, consisting of 7.178 acres; however, the property cannot meet the road frontage requirements of the Code. The north/south driveway is insufficient even if access is permitted by deed to allow compliance with the Code standards for access to a County road. In the opinion of the Department of Planning and Zoning, the creation of one house on this lot, assuming sufficient access is met, will not adversely impact any adjoining property owners or their properties or any neighbors or their uses. The Department concluded its investigation by recommending approval of the subject variance, conditioned upon four recommended conditions, one of which is that the 15 foot ingress and egress easement across Parcel A for use by Parcel B would be shown on a final plat and the proper agreements for the use of the easements shall be submitted for review and, if necessary, recorded with the final plat.

Mr. Carl Sadler appeared in opposition to the subject request. Mr. Sadler indicated that he is Mr. Arvin Sadler's son and that he lives in a tenant house on the 60 acre parcel adjoining the north/south driveway. In addition, Mr. Sadler indicated that he also owns Parcel A. Mr. Sadler indicates that he is solely responsible for maintenance of the east/west easement, but that others have helped or assisted in maintenance of this drive. The witness also stated that the north/south roadway has been used as a family road and that allowing strangers, that is, other than family members to use this very narrow drive would make it very difficult for the present users in that the road is narrow, there are no turn-offs, there are no pull-overs located on this road. Two cars cannot pass on the north/south drive. In conclusion, Mr. Sadler stated that Mr. Arvin Sadler, the Applicant, has done nothing to contribute to the maintenance of the road since 1987.

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The witness stated that, in his opinion, the Applicant did not have the right to allow Parcel B access to the existing north/south driveway because it was not a property owned by Mr. Arvin Sadler at the time of the conveyance, and described in the deed which has been marked as “Protestants Exhibit No. 1”.

### **CONCLUSION:**

The Applicant, Arvin D. Sadler, is requesting a variance, pursuant to Section 267-22C, of the Harford County Code, to allow the creation of a building lot with frontage on a 15 foot right-of-way in an AG/Agricultural District.

Section 267-22C of the Harford County Code requires:

“Lot frontage requirements. Any building, structure or use fronting on a public or private road shall be located on a lot abutting the road for at least twenty-five (25) feet, except as otherwise required by this Part 1. In attached dwelling projects, provided that all buildings are so located to provide access for servicing, fire protection and off-street parking, lots may front on open space, courts or group parking areas, and each such attached dwelling unit shall not be required to meet the road frontage standard.”

Harford County Code Section 267-11 permits variances and provides:

"Variances from the provisions or requirements of this Code may be granted if the Board finds that:

- (1) By reason of the uniqueness of the property or topographical conditions, the literal enforcement of this Code would result in practical difficulty or unreasonable hardship.
- (2) The variance will not be substantially detrimental to adjacent properties or will not materially impair the purpose of this Code or the public interest."

First, the Hearing Examiner does find that this property is unique. It contains significant topographical conditions that limit the development of this property for agricultural uses and it does lend itself to residential development. The issue before the Hearing Examiner is a simple one in that the subject parcel is landlocked with the exception of an east/west easement that has been created by the Applicant, which runs south of Parcel A, owned by Carl Sadler and across a 50 foot strip which is owned by the Applicant.

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The question, then, is whether the use by Parcel B of a 15 foot driveway would be sufficient access to meet the spirit and intent of the Harford County Code.

The Hearing Examiner finds, in fact, that the variance, if granted, would not create an adverse impact on the neighborhood or the intent of the Code. It is typical in Harford County to find parcels such as the subject parcel having access to County roads via private drives and easements across other parcels. This is not an unusual or atypical situation in Harford County in the Agricultural District. The Applicant proposes to satisfy the access requirements of the Code by allowing Parcel B an easement east/west, south of Parcel A, conveyed by the Applicant as part of a deed associated with the .507 acre lot located to the south of Parcel A, as indicated on Attachment 3. That east/west drive would then connect to the north/south drive, which was conveyed by deed dated May 6, 1975, as shown on “Protestants Exhibit No. 1”.

There are two issues involved in this case. One, and the one that the Hearing Examiner must deal with, is whether access to a Harford County public road by way of a 15 foot private drive would meet the requirements of the Code. Secondly, whether the proposal of the Applicant to use the north/south driveway as that 15 foot access to a Harford County public road would be allowable, based on the evidence before the Hearing Examiner.

The Hearing Examiner concludes that the use by Parcel B of a 15-foot driveway for access to a County public road would not harm in any way any adjacent or adjoining property owners, nor would it adversely effect or materially impact the purposes of the Code. Since the Applicant, upon cross-examination by the Hearing Examiner, indicated that he could, in fact, create such a common driveway across the half-acre parcel that he owns, which adjoins Parcel B and is located south of Parcel A, the Hearing Examiner finds that the requested relief by the Applicant is unnecessary in that he has the ability already to create access to Norrisville Road, MD Route 23, without the necessity of accessing through the existing 15 foot north/south drive. It does appear to the Hearing Examiner that Parcel B does not have the right of easement on the north/south driveway that the Applicant claims it does.

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Protestants Exhibit No. 1 indicates that the easement is being conveyed to the Applicant in this case for access to those tracts or parcels of land that were owned by the Applicant as of the date of this deed, the 6<sup>th</sup> of May, 1975, and is indicated by a deed dated November 5, 1973. Admittedly, Parcel B is not one of those lots and, therefore, in the opinion of the Hearing Examiner, does not have the right to use the north/south driveway by virtue of this recorded easement. However, since the Applicant does have the ability to create access to Route 23 by use of an adjoining parcel, the Hearing Examiner limits this decision to that particular parcel and the Applicant's ability to create a new access to Route 23 or to obtain the right to use the north/south driveway.

The Hearing Examiner, therefore, recommends that the requested variance be granted, subject to the following conditions:

1. That the Applicant submit a preliminary plan to the Department of Planning and Zoning for review and approval.
2. The Applicant shall submit a final plat to the Department of Planning and Zoning for review and recordation in the County Land Records.
3. The 15-foot ingress and egress easement across Parcel A and or across the southern located .507 acre parcel owned by the Applicant, for use by Parcel B, shall be shown on the final plat. A common drive agreement shall be entered among all users of the common drive, which will include a maintenance agreement for use of the common drive. This agreement shall be executed by all parties owning property adjoining or intended to use the common drive. These agreements shall be submitted for review and will be recorded with the final plat.
4. The property shall not be further subdivided.

Date JUNE 21, 2001

William F. Casey  
Zoning Hearing Examiner